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MINISTRY OF LAW

New Delhi, the 16th May, 1958/Vaisakha 26, 1880 (Saka)

The following Act of Parliament received the assent of the President on the 15th May, 1958, and is hereby published for general information:—

THE GIFT-TAX ACT, 1958 No. 18 of 1958

[15th May, 1958]

An Act to provide for the levy of gift-tax.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. (1) This Act may be called the Gift-tax Act, 1958.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall be deemed to have come into force on the 1st day of April, 1958.

Short title,
extent and
commence-
ment.

2. In this Act, unless the context otherwise requires,—

Definitions.

(i) "Appellate Assistant Commissioner" means a person empowered to exercise the powers of the Appellate Assistant Commissioner of Gift-tax under section 8;

(ii) "Appellate Tribunal" means the Appellate Tribunal appointed under section 5A of the Income-tax Act;

(iii) "assessee" means a person by whom gift-tax or any other sum of money is payable under this Act, and includes every

person in respect of whom any proceeding under this Act has been taken for the determination of the gift-tax payable by him;

(iv) "assessment year" means the year for which tax is chargeable under section 3;

(v) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924; 4 of 1924.

(vi) "Commissioner" means a person empowered to exercise the powers of a Commissioner of Gift-tax under section 9;

(vii) "company" means a company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of section 591 of that Act; 1 of 1956.

(viii) "donee" means any person who acquires any property under a gift, and, where a gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary;

(ix) "donor" means any person who makes a gift;

(x) "executor" means an executor or administrator of the estate of a deceased person;

(xi) "firm" has the meaning assigned to it in the Indian Partnership Act, 1932; 9 of 1932.

(xii) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to be a gift under section 4;

(xiii) "Gift-tax Officer" means the Income-tax Officer authorised to perform the functions of a Gift-tax Officer under section 7;

(xiv) "Income-tax Act" means the Indian Income-tax Act, 1922; 11 of 1922.

(xv) "Income-tax Officer" means a person appointed to be an Income-tax Officer under the Income-tax Act;

(xvi) "Inspecting Assistant Commissioner of Gift-tax" means a person empowered to exercise the functions of an Inspecting Assistant Commissioner of Gift-tax under section 10;

(xvii) "partner" has the meaning assigned to it in the Indian Partnership Act, 1932, and includes a person who being a minor has been admitted to the benefits of partnership; 9 of 1932.

(xviii) "person" includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not;

(xix) "prescribed" means prescribed by rules made under this Act;

(xx) "previous year", in relation to any assessment year—

(a) in the case of an assessee having a source of income, profits or gains in respect of which there is no previous year under the Income-tax Act, means the twelve months ending on the 31st day of March immediately preceding the assessment year;

(b) in the case of an assessee having different previous years under the Income-tax Act for different sources of income, profits or gains, means that previous year of twelve months determined as the previous year under sub-clause (a) of clause (11) of section 2 of the Income-tax Act or such period determined as the previous year under sub-clause (b) of clause (11) of that section, whichever expired last;

(c) in the case of any other assessee, means the previous year as defined in clause (11) of section 2 of the Income-tax Act if an assessment were to be made under that Act for that year;

(xxi) "principal officer", used with reference to a company or any association of persons, means—

(a) the secretary and treasurer, manager, managing agent, managing director or agent of the company or association; or

(b) any person connected with the management of the affairs of the company or association upon whom the Gift-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(xxii) "property" includes any interest in property, movable or immovable;

(xxiii) "taxable gifts" means gifts chargeable to Gift-tax under this Act;

(xxiv) "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person;

(xxv) "valuer" means a valuer appointed under section 4 of the Estate Duty Act, 1953.

24 of 1953.

CHAPTER II

CHARGE OF GIFT-TAX AND GIFTS SUBJECT TO SUCH CHARGE

Charge of gift-tax.

3. Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the 1st day of April, 1958, a tax (hereinafter referred to as gift-tax) in respect of the gifts, if any, made by a person during the previous year (other than gifts made before the 1st day of April, 1957) at the rate or rates specified in the Schedule.

Gifts to include certain transfers.

4. For the purposes of this Act,—

(a) where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor;

(b) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee, to the transferor, the amount of the consideration which has not passed or is not intended to pass shall be deemed to be a gift made by the transferor;

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been *bona fide*, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;

(d) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consi-

deration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be a gift made in his favour by the person who causes or has caused the property to be so vested.

5. (1) Gift-tax shall not be charged under this Act in respect of gifts made by any person— Exemption
in respect of
certain gifts.

(i) of immovable property situate outside the territories to which this Act extends;

(ii) of movable property situate outside the said territories unless the person—

(a) being an individual, is a citizen of India and is ordinarily resident in the said territories, or

(b) not being an individual, is resident in the said territories,

during the previous year in which the gift is made;

(iii) of property in the form of savings certificates issued by the Central Government, which that Government, by notification in the Official Gazette, exempts from gift-tax;

(iv) to the Government or any local authority;

(v) to any institution or fund established for a charitable purpose to which the provisions of section 15B of the Income-tax Act apply;

(vi) for any charitable purpose not falling within clause (v)—

(i) made at any time before the 1st day of April, 1958;

or

(ii) made at any time after that date subject, in respect of each such gift, to a maximum of rupees one hundred in value and, in respect of such gifts in any one previous year to the same donee, to a maximum of rupees five hundred in value in the aggregate;

(vii) to any relative dependent upon him for support and maintenance, on the occasion of the marriage of the relative, subject to a maximum of rupees ten thousand in value in respect of the marriage of each such relative;

(viii) to his or her spouse, subject to a maximum of rupees one lakh in value in the aggregate in one or more previous years, the expression "spouse" in this clause, where there are more wives than one, meaning all the wives together;

(ix) of policies of insurance or annuities to any person (other than his wife) who is dependent upon him for support and maintenance, subject to a maximum of rupees ten thousand in value in the aggregate in one or more previous years of the benefits in respect of each such donee;

(x) under a will;

(xi) in contemplation of death;

(xii) for the education of his children, to the extent to which the gifts are proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case;

(xiii) being an employer, to any employee by way of bonus, gratuity or pension or to the dependents of a deceased employee, to the extent to which the payment of such bonus, gratuity or pension is proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case and is made solely in recognition of the services rendered by the employee;

(xiv) in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift-tax Officer to have been made *bona fide* for the purpose of such business, profession or vocation;

(xv) to any person in charge of any such *Bhoodan* or *Sampattidan* movement as the Central Government may, by notification in the Official Gazette, specify;

(xvi) out of the sums, if any, guaranteed or assured by the Central Government as his privy purse, if the gifts are made for—

(a) the maintenance of any relatives dependent on him for support and maintenance; or

(b) for the performance of any official ceremonies:

Provided that such gifts are in accordance with the practice, usage or tradition of the family to which the person making the gift belongs.

(2) Without prejudice to the provisions contained in sub-section (1), gift-tax shall not be charged under this Act in respect of gifts made by any person during the previous year, subject to a maximum of rupees ten thousand in value.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), where either spouse makes any gifts out of any such gifts received by that spouse as fall within clause (viii) of sub-section (1), the gifts so made shall be deemed to be taxable gifts made by that spouse and nothing contained in sub-section (1) or sub-section (2) shall apply in relation to any such gifts.

Explanation.—For the purposes of this section,—

(a) an individual shall be deemed to be ordinarily resident in the territories to which this Act extends during the previous year in which the gift is made if during that year he is regarded as a resident but not as not ordinarily resident in the taxable territories within the meaning of the Income-tax Act;

(b) a Hindu undivided family, firm or other association of persons shall be deemed to be resident in the territories to which this Act extends during any previous year unless, during that year, the control and management of its affairs was situated wholly outside the said territories;

(c) a company shall be deemed to be resident in the territories to which this Act extends during the previous year, if—

1 of 1956.

(i) it is a company formed and registered under the Companies Act, 1956, or is an existing company within the meaning of that Act; or

(ii) during that year, the control and management of that company was situated wholly in the said territories;

39 of 1925.

(d) “gifts made in contemplation of death” has the same meaning as in section 191 of the Indian Succession Act, 1925.

6. (1) The value of any property other than cash transferred by way of gift shall, subject to the provisions of sub-sections (2) and (3), be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market on the date on which the gift was made. Value of gifts, how determined.

(2) Where a person makes a gift which is not revocable for a specified period, the value of the property gifted shall be the capitalised value of the income from the property gifted during the period for which the gift is not revocable.

(3) Where the value of any property cannot be estimated under sub-section (1) because it is not saleable in the open market, the value shall be determined in the prescribed manner.

CHAPTER III

GIFT-TAX AUTHORITIES

Gift-tax
Officers.

7. Every Income-tax Officer having jurisdiction or exercising powers as such under the Income-tax Act in respect of any person shall perform the function of a Gift-tax Officer under this Act in respect of that person.

Explanation.—For the purposes of this section, the Income-tax Officer having jurisdiction in relation to a person who has no income assessable to income-tax under the Income-tax Act, means the Income-tax Officer of the area in which that person resides.

Appellate
Assistant
Commissioners of
Gift-tax.

8. The Board may empower as many persons as it thinks fit to exercise under this Act the functions of an Appellate Assistant Commissioner of Gift-tax, and on being so empowered the Appellate Assistant Commissioners shall perform their functions in respect of such areas or such persons or such classes of persons as the Board may direct, and where such directions have assigned to two or more Appellate Assistant Commissioners the same areas or the same persons or the same classes of persons they shall perform their functions in accordance with such orders as the Board may make for the distribution and allocation of the work to be performed.

Commissioners of
Gift-tax.

9. The Board may empower as many persons as it thinks fit to exercise under this Act the functions of a Commissioner of Gift-tax, and on being so empowered the Commissioners of Gift-tax shall perform their functions in respect of such areas or such persons or such classes of persons as the Board may direct, and where such directions have assigned to two or more Commissioners the same area, or the same persons or the same classes of persons they shall have concurrent jurisdiction subject to such orders, if any, as the Board may make for the distribution and allocation of the work to be performed.

Inspecting
Assistant
Commissioners of
Gift-tax.

10. The Commissioner of Gift-tax may empower as many persons as he thinks fit to exercise under this Act the functions of an Inspecting Assistant Commissioner of Gift-tax, and on being so

empowered the Inspecting Assistant Commissioners of Gift-tax shall perform their functions in respect of such areas or such persons or such classes of persons as the Commissioner may direct, and where such directions have assigned to two or more Inspecting Assistant Commissioners the same area or the same persons or the same classes of persons they shall perform their functions in accordance with such orders as the Commissioner may make for the distribution and allocation of the work to be performed.

11. The Gift-tax Officers shall be subordinate to the Commissioner of Gift-tax and the Inspecting Assistant Commissioner of Gift-tax within whose jurisdiction they perform their functions.

Gift-tax Officers to be subordinate to the Commissioner of Gift-tax and the Inspecting Assistant Commissioner of Gift-tax.

12. All officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board:

Gift-tax authorities to follow orders, et c. of the Board

Provided that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner of Gift-tax in the exercise of his appellate functions.

CHAPTER IV

ASSESSMENT

13. (1) Every person who during a previous year has made any taxable gifts shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Gift-tax Officer a return in the prescribed form and verified in the prescribed manner.

Return of gifts.

(2) If the Gift-tax Officer is of opinion that in respect of the gifts made by a person during any previous year he is liable to gift-tax under this Act, then notwithstanding anything contained in sub-section (1), he may serve a notice upon such person requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner.

(3) The Gift-tax Officer may in his discretion extend the date for the delivery of the return under this section.

Return after
due date and
amendment
of return.

14. If any person has not furnished a return within the time allowed under section 13, or having furnished a return under that section, discovers any omission or a wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

Assessment etc.

15. (1) If the Gift-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 13 or section 14 is complete, he shall assess the value of the taxable gifts made by the assessee and determine the amount payable by him as gift-tax.

(2) If the Gift-tax Officer is not so satisfied, he shall serve a notice on the assessee either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return.

(3) The Gift-tax Officer, after hearing such evidence as the person may produce and such other evidence as he may require on any specified points shall, by order in writing, assess the value of taxable gifts made by the assessee and determine the amount payable by him as gift-tax.

(4) For the purpose of making an assessment under this Act, the Gift-tax Officer may serve on any person who has made a return under sub-section (1) of section 13 or section 14, or upon whom a notice has been served under sub-section (2) of section 13, a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Gift-tax Officer may require.

(5) If any person fails to make a return in response to any notice under sub-section (2) of section 13 or fails to comply with the terms of any notice issued under sub-section (2) or sub-section (4), the Gift-tax Officer shall estimate the value of taxable gifts to the best of his judgment and determine the amount payable by the person as gift-tax.

Gift escaping
assessment.

16. (1) If the Gift-tax Officer—

(a) has reason to believe that by reason of omission or failure on the part of an assessee to make a return under section 13 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, any taxable gift has escaped assessment for that year, whether

by reason of under-assessment or assessment at too low a rate or otherwise; or

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (a), that any taxable gift has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise;

he may, in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 13, and may proceed to assess or re-assess any taxable gift which has escaped assessment, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section.

(2) Nothing contained in this section limiting the time within which any proceedings for assessment or re-assessment may be commenced shall apply to an assessment or reassessment to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 22, section 23, section 24, section 26 or section 28.

17. (1) If the Gift-tax Officer, Appellate Assistant Commissioner, Penalty for default and concealment Commissioner or Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (1) or sub-section (2) of section 13, or section 16 or has without reasonable cause failed to furnish it within the time allowed and in the manner required; or

(b) has without reasonable cause failed to comply with a notice under sub-section (2) or sub-section (4) of section 15; or

(c) has concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof;

he or it may, by order in writing, direct that such person shall pay by way of penalty—

(i) in the case referred to in clause (a), in addition to the amount of gift-tax payable by him, a sum not exceeding one and a half times the amount of such tax, and

(ii) in the case referred to in clause (b) or clause (c), in addition to the amount of gift-tax payable by him, a sum not exceeding one and a half times the amount of the tax, if any, which would have been avoided if the return made by such person under section 13, section 14, or section 16, as the case may be, had been accepted as correct.

(2) No order shall be made under sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard.

(3) No prosecution for an offence under this Act shall be instituted in respect of the same facts in relation to which a penalty has been imposed under this section.

(4) The Gift-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Gift-tax.

**Rebate on
advance
payments.**

18. (1) If a person making a taxable gift of the value of not less than rupees ten thousand pays into the treasury, in the case of a taxable gift made before the 16th day of July, 1958, before the 1st day of August, 1958, and, in the case of any other taxable gift, within fifteen days of his making the gift, an amount calculated in the manner specified in sub-section (2), he shall, at the time of assessment under section 15, be given credit in addition to the amount so paid, for an amount equal to ten per cent. of the amount so paid.

(2) The amount to be paid into the treasury under sub-section (1) shall be—

(a) where the value of the gift does not exceed rupees fifty thousand, four per cent. of the value;

(b) where the value of the gift exceeds rupees fifty thousand but does not exceed rupees two hundred thousand, eight per cent. of the value; and

(c) in any other case, fifteen per cent. of the value.

CHAPTER V

LIABILITY TO ASSESSMENT IN SPECIAL CASES

**Tax of
deceased
person
payable
by legal re-
presentative.**

19. (1) Where a person dies, his executor, administrator, or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the gift-tax determined as payable by such person, or any sum which would have been payable by him under this Act if he had not died.

(2) Where a person dies without having furnished a return under section 13, or after having furnished a return which the Gift-tax Officer has reason to believe to be incorrect or incomplete, the Gift-tax Officer may make an assessment of the value of the taxable gifts made by such person and determine the gift-tax payable by him, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person if he had survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which might, under the provisions of section 15 have been required from the deceased person.

(3) The provisions of sections 13, 14 and 16 shall apply to an executor, administrator or other legal representative as they apply to any person referred to in that section.

20. (1) Where, at the time of making an assessment, it is brought to the notice of the Gift-tax Officer that a partition has taken place among the members of a Hindu undivided family, and the Gift-tax Officer, after enquiry, is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an order to that effect and he shall make assessments on the amount of taxable gifts made by the family as such as if no partition had taken place and each member or group of members shall be liable jointly and severally for the tax assessed on the value of the taxable gifts made by the joint family as such.

Assessment after partition of a Hindu undivided family.

(2) Where the Gift-tax Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family.

21. (1) Where a firm or association of persons liable to pay gift-tax has been discontinued or dissolved, the gift-tax Officer shall determine the gift-tax payable by the firm or association of persons as such as if no such discontinuance or dissolution had taken place.

Liability in case of discontinued firm or association of persons.

(2) If the Gift-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act in respect of any such firm or other association of persons as is referred to in sub-section (1) is satisfied that the firm or association is guilty of any of the acts specified in clause (a) or clause (b) or clause (c) of sub-section (1) of section 17, he or it may impose or direct the imposition of a penalty in accordance with the provisions of that section.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm or a member of the association, as the case may be, shall be jointly and severally liable for the amount of tax or penalty payable, and all the provisions of Chapter VII, so far as may be, shall apply to any such assessment or imposition of penalty.

CHAPTER VI

APPEALS, REVISIONS AND REFERENCES

Appeal to
the Appellate
Assistant
Commissioner from
orders of
Gift-tax
Officers.

22. (1) Any person,—

(a) objecting to the value of his taxable gifts determined under this Act; or

(b) objecting to the amount of gift-tax determined as payable by him under this Act; or

(c) denying his liability to be assessed under this Act; or

(d) objecting to any penalty imposed by the Gift-tax Officer under section 17, or

(e) objecting to any order of the Gift-tax Officer under sub-section (2) of section 20; or

(f) objecting to any penalty imposed by the Gift-tax Officer under sub-section (1) of section 46 of the Income-tax Act as applied under section 33 for the purposes of gift-tax;

may appeal to the Appellate Assistant Commissioner against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner:

Provided that no appeal shall lie under clause (f) unless the tax has been paid before the appeal is filed.

(2) An appeal shall be presented within thirty days of the receipt of the notice of demand relating to the assessment or penalty objected to, or the date on which any order objected to, is communicated to him, but the Appellate Assistant Commissioner may admit an appeal after the expiration of the period aforesaid if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(3) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing.

(4) The Appellate Assistant Commissioner may,—

(a) at the hearing of an appeal allow an appellant to go into any ground of appeal not specified in the grounds of appeal;

(b) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Gift-tax Officer.

(5) In disposing of an appeal, the Appellate Assistant Commissioner may pass such order as he thinks fit which may include an order enhancing the amount of gift-tax determined or penalty imposed:

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) A copy of every order passed by the Appellate Assistant Commissioner under this section shall be forwarded to the appellant and the Commissioner.

23. (1) Any assessee objecting to an order passed by the Appellate Assistant Commissioner under section 17 or section 22 or to an order passed by the Commissioner under section 17 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order. ^{Appeal to the Appellate Tribunal.}

(2) The Commissioner may, if he is not satisfied as to the correctness of any order passed by an Appellate Assistant Commissioner under section 22 direct the Gift-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days of the date on which the order is communicated to the Commissioner.

(3) The Appellate Tribunal may admit an appeal after the expiry of sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of rupees one hundred.

(5) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the amount of gift-tax determined or penalty imposed:

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person

affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) Where the appellant objects to the valuation of any gift, the Appellate Tribunal may, and if the appellant so requires, shall, refer the question of disputed value to the arbitration of two valuers, one of whom shall be nominated by the appellant and the other by the respondent, and the Appellate Tribunal shall, so far as that question is concerned, pass its order under sub-section (5) conformably to the decision of the valuers:

Provided that if there is a difference of opinion between the two valuers, the matter shall be referred to a third valuer nominated by agreement, or failing agreement, by the Appellate Tribunal, and the decision of that valuer on the question of valuation shall be final.

(7) The costs of any arbitration proceeding under sub-section (6) shall be borne by the Central Government or the assessee, as the case may be, at whose instance the question was referred to the valuers:

Provided that where the assessee has been wholly or partially successful in any reference made at his instance, the extent to which the costs shall be borne by the assessee shall be at the discretion of the Appellate Tribunal.

(8) The valuers may, in disposing of any matter referred to them for arbitration under sub-section (6), hold or cause to be held such inquiry as they think fit, and after giving the appellant and the respondent an opportunity of being heard, pass such orders thereon as they think fit and shall send a copy of such order to the Appellate Tribunal.

(9) A copy of every order passed by the Appellate Tribunal under this section shall be forwarded to the assessee and the Commissioner.

(10) Save as provided in section 26, any order passed by the Appellate Tribunal on appeal shall be final

(11) The provisions of sub-sections (5), (7) and (8) of section 5A of the Income-tax Act shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Income-tax Act.

24. (1) The Commissioner may, either on his own motion or on application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, pass such order thereon not being an order prejudicial to the assessee, as the Commissioner thinks fit:

Power of Commissioner to revise orders of subordinate authorities.

Provided that the Commissioner shall not revise any order under this sub-section in any case—

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal and the time within which such appeal can be made has not expired or, in the case of the Appellate Tribunal, the assessee has not waived his right of appeal;

(b) where the order is pending in appeal before the Appellate Assistant Commissioner or has been the subject of an appeal to the Appellate Tribunal;

(c) where the application is made by the assessee for such revision unless—

(i) the application is accompanied by a fee of rupees twenty-five; and

(ii) the application is made within one year from the date of the order sought to be revised or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period; and

(d) where the order is sought to be revised by the Commissioner on his own motion, if such order is made more than one year previously.

Explanation.—For the purposes of this sub-section,—

(a) the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner, and

(b) an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(2) Without prejudice to the provisions contained in sub-section (1) the Commissioner may call for and examine the record of any proceeding under this Act, and, if he considers that any order passed

therein by a Gift-tax Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

(3) No order shall be made under sub-section (2) after the expiry of two years from the date of the order sought to be revised.

Appeal to
the Appellate
Tribunal
from orders
of enhance-
ment by
commis-
sioner.

25. (1) Any assessee objecting to an order of enhancement made by the Commissioner under section 24 may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.

(2) An appeal to the Appellate Tribunal under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of rupees one hundred.

(3) The provisions of sub-sections (3) and (5) to (10) inclusive of section 23 shall apply in relation to any appeal under this section as they apply in relation to any appeal under that section.

Reference to
High Court.

26. (1) Within ninety days of the date upon which he is served with an order under section 23 or section 25, the assessee or the Commissioner may present an application in the prescribed form and where the application is by the assessee, accompanied by a fee of rupees one hundred, to the Appellate Tribunal requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall, if in its opinion, a question of law arises out of such order, state the case for the opinion of the High Court.

(2) An application under sub-section (1) may be admitted after the expiry of the period of ninety days aforesaid if the Appellate Tribunal is satisfied that there was sufficient cause for not presenting it within the said period.

(3) If, on an application made under sub-section (1), the Appellate Tribunal,—

(a) refuses to state a case on the ground that no question of law arises, or

(b) rejects it on the ground that it is time-barred,
the applicant may, within ninety days from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied

with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that, if in any case where the Appellate Tribunal has been required by an assessee to state a case the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives notice of refusal to state the case, withdraw his application, and if he does so, the fee paid by him under sub-section (1) shall be refunded to him.

(4) The statement to the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modification therein as it may direct.

(6) The High Court, upon hearing any such case, shall decide the question of law raised therein, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the grounds on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(7) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, overpaid as gift-tax shall be refunded with such interest as the Commissioner may allow, unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal in the Supreme Court.

(8) The costs of any reference to the High Court shall be in the discretion of the Court.

(9) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court under 1

Hearing by
High Court.

27. When a case has been stated to the High Court under section 26, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority of such Judges, if any:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Appeal to
Supreme
Court.

28. (1) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 26 in any case which the High Court certifies as a fit case for appeal to the Supreme Court.

(2) Where the judgment of the High Court is varied or reversed on appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (6) of section 26.

(3) The High Court may, on application made to it for the execution of any order of the Supreme Court in respect of any costs awarded by it, transmit the order for execution to any Court subordinate to the High Court.

CHAPTER VII

PAYMENT AND RECOVERY OF GIFT-TAX

Gift-tax
by whom
payable.

29. Gift-tax shall be payable by the donor but where in the opinion of the Gift-tax Officer the tax cannot be recovered from the donor, it may be recovered from the donee:

Provided that the amount of the tax which may be recovered from the donee shall not exceed that portion of the gift-tax which is attributable to the value of the gift made to the donee by the donor as at the date of the gift.

Gift-tax to
be charged
on property
gifted.

30. Gift-tax payable in respect of any gift comprising immovable property shall be a first charge on that property but any such charge shall not affect the title of a *bona fide* purchaser for valuable consi-

31. When any tax or penalty is due in consequence of any order passed under this Act, the Gift-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable and the time within which it shall be payable.

Notice of demand.

32. (1) Any amount specified as payable in a notice of demand issued under section 31 shall be paid within the time, at the place, and to the person mentioned in the notice, or if no time is so mentioned, then on or before the first day of the second month following the date of service of the notice, and any assessee or other person liable to pay the amount failing so to pay shall be deemed to be in default.

Recovery of tax and penalties.

(2) Notwithstanding anything contained in this section, where an assessee has presented an appeal under section 22, the Gift-tax Officer may, in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

33. The provisions of sub-sections (1), (1A), (2), (3), (4), (5), (5A), (6) and (7) of section 46 and section 47 of the Income-tax Act shall apply as if the said provisions were provisions of this Act, and referred to gift-tax and sums imposed by way of penalty under this Act instead of to income-tax and sums imposed by way of penalty under that Act, and to Gift-tax Officer and Commissioner of Gift-tax instead of to Income-tax Officer and Commissioner of Income-tax.

Mode of recovery.

CHAPTER VIII

MISCELLANEOUS

34. At any time within four years from the date of any order passed by him, or it, the Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal may, on his, or its, own motion rectify any mistake apparent from the record and shall, within a like period rectify any such mistake which has been brought to the notice of the Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner or the Appellate Tribunal, as the case may be, by an assessee:

Rectification of mistakes.

Provided that no such rectification shall be made which has the effect of enhancing the amount of gift-tax determined unless the assessee has been given a reasonable opportunity of being heard in the matter.

Prosecution.

35. (1) If any person fails without reasonable cause,—

(a) to furnish in due time any return of gifts under this Act;

(b) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (2) or sub-section (4) of section 15, such accounts, records and documents as are referred to in the notice;

(c) to furnish within the time specified any statement or information which such person is bound to furnish to the Gift-tax Officer under section 37;

he shall, on conviction before a magistrate, be punishable with fine which may extend to rupees ten for every day during which the default continues.

(2) If a person makes a statement in a verification in any return of gifts furnished under this Act or in a verification mentioned in section 22, 23 or 25 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall on conviction before a magistrate, be punishable with simple imprisonment which may extend to one year, or with fine which may extend to rupees one thousand, or with both.

(3) A person shall not be proceeded against for an offence under this section except at the instance of the Commissioner.

(4) The Commissioner may either before or after the institution of proceedings compound any such offence.

Explanation.—For the purposes of this section “magistrate” means a presidency magistrate, a magistrate of the first class or a magistrate of the second class specially empowered by the Central Government to try offences under this Act.

Power to
take evidence
on oath, etc.

36. The Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of § of 1908. the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents,

(c) receiving evidence on affidavit,

(d) issuing commissions for the examination of witnesses; and any proceeding before the Gift-tax Officer, the Appellate Assistant Commissioner the Commissioner or

be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code 45 of 1860.

Power to
call for
information.

37. Where, for the purposes of determining the gift-tax payable by any person, it appears necessary for the Gift-tax Officer to obtain any statement or information from any person, the Gift-tax Officer may serve a notice requiring such person, on or before a date to be therein specified, to furnish such statement or information on the points specified in the notice, and that person shall, notwithstanding anything in any law to the contrary, be bound to furnish such statement or information to the Gift-tax Officer:

Provided that no legal practitioner shall be bound to furnish any statement or information under this section based on any professional communications made to him otherwise than as permitted by section 126 of the Indian Evidence Act, 1872.

1 of 1872.

Effect of
transfer
of authorities
on pending
proceedings.

38. Whenever in respect of any proceeding under this Act any Gift-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises such jurisdiction, the authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Computation
of period of
limitation.

39. In computing the period of limitation, prescribed for an appeal under this Act or for an application under section 26, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

Service of
notice.

40. (1) A notice or a requisition under this Act may be served on the person therein named either by post or as if it were summons issued by a court under the Code of Civil Procedure, 1908.

5 of 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family be addressed to any member of the firm or to the manager or any adult male member of the family, and in the case of a company or association of persons be addressed to the principal officer thereof.

Prohibition
of disclosure
of informa-
tion.

41. (1) Subject to the provisions contained in sub-section (2), the provisions of section 54 of the Income-tax Act shall apply to all accounts or in relation to statements, documents, evidence or affidavits given, produced or obtained in connection with or in the course of any proceeding under this Act as they apply to or in relation to similar particulars under that Act subject to the modification that

the reference to any "Income-tax authority" in clause (d) of sub-section (3) and to the "Commissioner" in sub-section (5) of section 54 of that Act shall be construed as a reference to any "Gift-tax, authority" and to the "Commissioner of Gift-tax", respectively.

(2) Nothing contained in section 54 of the Income-tax Act shall apply to the disclosure of any such particulars as are referred to in sub-section (1) to any person acting in the execution of this Act or the Income-tax Act, or the Estate Duty Act, 1953, or the Wealth-tax Act, 1957, or the Expenditure-tax Act, 1957, where it is necessary or desirable to disclose the same to him for the purposes of this Act or any of the other Acts aforesaid.

34 of 1953.
27 of 1957.
29 of 1957.

42. No suit shall lie in any civil court to set aside or modify any assessment made under this Act, and no prosecution, suit or other legal proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

Bar of suits
in civil
court.

43. Any assessee who is entitled to or required to attend before any Gift-tax authority or the Appellate Tribunal in connection with any proceeding or inquiry under this Act, except where he is required under this Act, to attend in person, may attend a person authorised by him in writing in this behalf, being a relative of, or a person regularly employed by, the assessee or a legal practitioner or a chartered accountant or any other person having such qualifications as may be prescribed.

Appearance
before Gift-
tax authori-
ties by au-
thorised
representa-
tives.

Explanation.—For the purposes of this section,—

(a) the expression "a person regularly employed by the assessee" includes any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings;

(b) "chartered accountant" means a chartered accountant as defined in the Chartered Accountants Act, 1949.

38 of 1949.

44. The Central Government may enter into any agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to gift-tax payable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Agreement
for avoidance
or relief of
double
taxation
with respect
to gift-tax.

Explanation.—The expression "reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

Act not to
apply in
certain
cases.

45. The provisions of this Act shall not apply to gifts made by— 2 of 1956.

(a) a Government company as defined in section 617 of the Companies Act, 1956;

(b) a corporation established by a Central, State or Provincial Act;

(c) any company (other than a private company as defined in section 3 of the Companies Act, 1956):

Provided that the affairs of the company or the shares in the company carrying more than fifty per cent. of the total voting power were at no time during the previous year controlled or held by less than six persons;

(d) a company which is a subsidiary of and in which more than half the nominal value of equity share capital is held by a company referred to in clause (c);

(e) any institution or fund the income whereof is exempt from income-tax under clause (i) of sub-section (3) of section 4 of the Income-tax Act.

Explanation.—For the purpose of computing the number of six persons referred to in the proviso to clause (c), persons who are related to one another as husband and wife, brother and sister, brothers, sisters or who are lineal descendants or ascendants of one another and persons who are nominees of any other person together with that other person shall be treated as a single person.

Power to
make rules.

46. (1) The Board may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(a) the manner in which the value of any property may be determined;

(b) the form in which returns under this Act shall be made and the manner in which they shall be verified;

(c) the form in which appeals and applications under this Act may be made, and the manner in which they shall be verified;

(d) the form of any notice of demand under this Act;

(e) the refunds of gift-tax paid in respect of gifts which are revoked on the happening of any specified event which does not depend on the will of the donor or of any amount paid under section 18;

(f) the areas for which lists of valuers may be drawn up;

(g) any other matter which has to be, or may be, prescribed for the purposes of this Act.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of commencement of this Act.

(4) All rules made under this Act shall be laid before each House of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

THE SCHEDULE

(See section 3)

RATES OF GIFT-TAX

	<i>Rate of gift-tax</i>
(1) On the first Rs. 50,000 of the value of all taxable gifts	4%
(2) On the next Rs. 50,000 of the value of all taxable gifts	6%
(3) On the next Rs. 50,000 of the value of all taxable gifts	8%
(4) On the next Rs. 50,000 of the value of all taxable gifts	10%
(5) On the next Rs. 1,00,000 of the value of all taxable gifts	12%
(6) On the next Rs. 2,00,000 of the value of all taxable gifts	15%
(7) On the next Rs. 5,00,000 of the value of all taxable gifts	20%
(8) On the next Rs. 10,00,000 of the value of all taxable gifts	25%
(9) On the next Rs. 10,00,000 of the value of all taxable gifts	30%
(10) On the next Rs. 20,00,000 of the value of all taxable gifts	35%
(11) On the balance of the value of all taxable gifts	40%

G. R. RAJAGOPAUL,

Addl. Secy. to the Govt. of India.